

School Funding Litigation Primer

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*These materials present interpretations made by the author and do not
constitute the official position of the Attorney General.

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Washington State Constitution, Article 9, sections 1 and 2

- §1. It is the *paramount duty* of the state to make *ample* provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.
- §2. The legislature shall provide for a *general and uniform* system of public schools.

Northshore School District v. Kinnear, 84 Wn.2d 685 (1974)

- First constitutional challenge to school finance system.
- “Paramount duty” in Art. IX, §1 is an “important” duty on par with other major duties and functions of government. “Ample provision” is determined by the legislature and superintendent of public instruction—not the judiciary (*Partially Overruled in Seattle School District*)
- Majority rejected ample funding claim: Lengthy dissent by Justice Stafford

Northshore (cont'd)

- Disparities in assessed valuation of property among various school districts did not deny equal protection to taxpayers or school children.
- ***A general and uniform system*** is one in which (a) Every child has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities; (b) A child could transfer from one district to another without substantial loss of credit or standing: Variation in size and taxable property among districts does not demonstrate that the system is neither general nor uniform.

**Seattle School District No. 1 v. State, 90
Wn.2d 476 (1977) (a/k/a School Funding I)**
(Opinion by Justice Stafford)

- Direct review of decision by Thurston Cy Judge Doran.
- Article IX, § 1 not a merely an unenforceable preamble, but imposes a judicially enforceable mandatory duty on the State
- All children residing within the state's borders have a right to be amply provided with an education.
- This right is constitutionally paramount and must be achieved through a general and uniform system of public schools.

School Funding I (cont'd)

- Legislature must define a basic program of education and amply fund the program from dependable and regular tax sources.
- Local excess levies are “neither dependable, nor regular” because they are dependent on the whim of the electorate and are temporary.
- The legislature may authorize use of excess levies for "enrichment" programs that the state is not required to support under its basic education obligation.

School Funding I (cont'd)

- The Basic Education Act was not before the court. Facts of the case were that there was no legislatively defined basic program of education
- Court declined to give precise definitions of ample, provision, and education. The words are broad guidelines for giving legislature broadest latitude for to implement constitutional mandate

School Funding I (cont'd)

- The State's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the market place of ideas.
- Constitution requires fully sufficient funds for the general and uniform system of public schools
- Case sets up future cases with recurring themes

Basic Education Act of 1977

- Enacted in response to the Superior Court decision in School Funding I, while decision of the Supreme Court was pending. The BEA defined basic education to include:
- A school year of at least 180 days and minimum instructional hours per grade
- Instructional content for each age group
- Funded ratios of certificated staff to students
- Base salary allocations for teachers; average salary allocations for other staff
- In addition, the legislature acted to reduce districts' reliance on levies by enacting the Levy Lid Act.

School Funding II (Thurston Cy Superior Ct., Judge Doran, 1983)

Themes: ample provision; definition of basic education

- Filed by Seattle School District seeking declaration that legislature had not fully funded the Basic Education Act and subsequently enacted supplemental programs for the 1981-83 biennium.
- Once the legislature has defined and fully funded basic education, it may not reduce that level of funding.
- The state must fund salaries necessary to assure local school districts the ability to hire and retain competent staff.

School Funding II (Cont'd)

- In addition to the general apportionment described in the Basic Education Act, the following supplemental programs fall within the definition of basic education for constitutional purposes: (a) *Special Education*; (b) *Bilingual education*; (c) *Remedial education* (Learning Assistance Program); (d) *Some pupil transportation*.
- "Accretion": Items within the state's definition of basic education are not restricted to the general apportionment formulas and ratios found in the BEA.
- Look to legislative intent

School Funding III (Thurston Cy Superior Ct., Judge Doran, 1988)

Themes: ample funding; deference to legislature as to “how”.

- Challenge to component of Special Education funding that allocated funds through a block grant.
- The state may use a formula approach, based on statewide averages, as long as a “safety net” allowing districts to obtain supplemental funds is provided.
- In determining need for safety net, state must be satisfied that district is operating a *reasonably efficient program*, that *IEPs are properly formulated*; and district is otherwise making reasonable effort to operate within formula funds

Tunstall v. Bergeson, 141 Wn.2d 201 (2000)

Themes: scope of const'l right; legislative discretion to define "how."

- Inmates incarcerated in the correction system under the age of 21 challenged statute that provides education only until age 18.
- Inmates under age 18 have a constitutional right to public education and that right is satisfied under the statute (RCW 28A.193)
- Reaffirms that ultimate power to interpret, construe and enforce the constitution belongs to the judiciary. Choosing the means belongs to legislature.
- The term "children" under article IX of the constitution includes individuals up to age 18
- "General and uniform system of public schools" does not mean the state is obligated to provide an identical education to all children, regardless of circumstances

McGowan v. State, 148 Wn.2d 278 (2002)

Theme: definition of basic education

- Challenge to interpretation of I-732 providing COLA for school employees. “All means all.”
- Calling the COLA basic education doesn't make it so. I-732 COLAs were not basic education because:
- COLA is not an educational service. Dissociated from any particular basic education program
- Results in mandatory basic education dollars being spent to supplement locally funded enrichment programs. The level of state basic education contribution would be impermissibly tied to local levies.

Brown v. State 155 Wn.2d 254 (2005)

Themes: **Definition of Basic Ed; Court ultimately decides**

- Did Learning Improvement Days become “basic education” thereby prohibiting State from reducing funding under the School Funding II principles?
- Insufficient evidence that legislature intended to bring LID days into the basic education definition.
- School Funding II is well reasoned but has no preclusive effect on the Supreme Court.
- More and less: (a) The Basic Education Act does not define the scope of the State’s paramount duty under the constitution; but (b) court questions whether the legislature can bindingly designate programs to be basic education in the constitutional sense.

Current Cases

School District Alliance v. State (Thurston Cy Superior Court) – on appeal in Division II Court of Appeals

- Challenge to adequacy of special education funding provided to districts/ allegations of constitutional infirmity to special education funding formula
- The state may apply a 12.7% cap on excess cost allocation, if it allows districts over the cap to apply for additional funding through safety-net or otherwise.

Federal Way School District v. State, King County Superior Court

- **(Filed December, 2006)**
- Challenge to equity of the average salary allocation schedules in basic education funding formula.

McLeary v. State , King Cy Sup. Court

- Filed in January 11, 2007. Challenge to adequacy of basic education funding based on failure to achieve goals set forth in the Basic Education Act.